

**DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION**



**Trust Land Management Division**

BRIAN SCHWEITZER, GOVERNOR

1625 ELEVENTH AVENUE

DIRECTOR'S OFFICE (406) 444-2074  
TELEFAX NUMBER (406) 444-2684

PO BOX 201601  
HELENA, MONTANA 59620-1601

September 17, 2009

Senator Greg Barkus  
Senate District 4  
PO Box 2647  
Kalispell MT 59903

Re: Kalispell Pole & Timber, Reliance Refinery and Yale Oil Refinery (KRY)  
Swank Enterprise Invoices

Dear Senator Barkus,

I have reviewed the State of Montana's 2005 Consent Decree, House Bill 2, the August 13, 2009 Final Unified Abatement Order issued by the First Judicial District Court, and the legal analysis prepared by Greg Petesch.

As you know, Swank Enterprises has forwarded invoices it received from the Montana Department of Environmental Quality (DEQ) related to costs related to the KRY State Superfund Site. These invoices request payment from Swank Enterprises for their share of remediation costs pursuant to the DEQ/Swank settlement agreement. Our department also receives these invoices from DEQ. We pay the State of Montana's 27.5% share of these costs per the terms of our settlement agreement with DEQ. Like Swank Enterprises, the State of Montana is a landowner within the KRY superfund site, and like Swank Enterprises, we went through the legal process as a potentially liable party and reached a settlement agreement that was reviewed and approved by the court.

The Final Unified Abatement Order rejects Swank's request to set aside the legal liability Swank expressly agreed to in their settlement agreement with DEQ. The Abatement Order references both the Swank and DNRC settlement agreements and directs both parties to pay their share (2% and 27.5%, respectively) of remediation costs. The Abatement Order discusses the possibility that BNSF may choose to directly handle the future abatement work. If so, BNSF will send their documentation of actual costs for review and approval by DEQ. Both Swank and DNRC are required to pay BNSF for our proportionate share of DEQ-approved costs.

Greg Petesch's review states that the HB 2 appropriation "is to be used by the DNRC for the state share of the cost to remediate environmental damage at the KRY site." Mr. Petesch also states that a "grant of state funds to a private entity as part of the KRY remediation would remain

within the public purpose of the appropriation," but notes that "[t]here is nothing in House Bill 2 that provides that the appropriation in question is for the benefit of a specific private entity."

Swank Enterprises is asking the State of Montana to ignore the court's legal determination upholding Swank's share of financial responsibility and voluntarily pay Swank Enterprises invoices in addition to the State of Montana's legal obligation. While that may have been your intent, the language in HB 2 does not direct DNRC to assume responsibility for Swank Enterprises judicially determined share of remediation costs. DNRC cannot use the language in HB 2 to infer that Swank is somehow eligible for discretionary coverage of its legal liability without exposing the State to similar claims from BNSF or other liable parties.

Sincerely,



Mary Sexton  
Director

Cc: Swank Enterprises